

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEROME TALLEY,

Plaintiff,

v.

BEN SIAS, DAVID W PETERSON,  
COREEN E SCHNEPF, JEANETTE M  
DALTON, ANNA M LAURIE,

Defendants.

CASE NO. 3:15-CV-05501-RJB-JRC

REPORT AND RECOMMENDATION

NOTED FOR: September 4, 2015

The District Court has referred this 42 U.S.C. § 1983 civil rights matter to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Rules MJR 1, MJR 3, and MJR 4.

Plaintiff Jerome Talley filed an application for leave to proceed *in forma pauperis* (IFP) and a proposed 42 U.S.C. § 1983 complaint. Dkts. 1, 3. Plaintiff's complaint is unclear but it appears that he alleges that his Sixth Amendment and due process rights were violated during an arrest that occurred in June, 2015. Dkt. 1. He is attempting to bring a claim against five (5) defendants, including the two Washington State Superior Court judges. *Id.* The Court recommends denying plaintiff's motion to proceed IFP because plaintiff has, on three or more

occasions, filed actions that the courts have deemed frivolous or failed to state a claim and plaintiff is not under imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

### DISCUSSION

Section 1915(g), enacted April 26, 1996, provides that a prisoner who brings three or more civil actions or appeals that are dismissed as frivolous or for failure to state a claim will be precluded from bringing any other civil action or appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). *See Thompson v. Stafford Creek Corr. Ctr.*, No. C09-5502BHS, 2010 WL 2605223, at \*1 (W.D. Wash. June 25, 2010) (when a state provides an adequate post-deprivation remedy for an unauthorized taking of property, there is no cause of action under § 1983 and dismissal of plaintiff’s claim counts as a strike pursuant to § 1915(g)).

This court may take notice of judicial proceedings in another court. *See U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). A review of the court records from this district and the Eastern District of Washington demonstrate that plaintiff has filed at least thirteen (13) cases while incarcerated. Four (4) of these cases were dismissed as frivolous or for failure to state a claim. The first strike occurred in *Talley v. Holevinski*, (Eastern District Case No. 02:99-cv-5036); that case was dismissed on January 18, 2000 for failure to state a claim. The second strike occurred in *Talley v. Bailey et al.*, (Western District Case No. 2:08-cv-00677-TSZ); that case was dismissed on June 27, 2008 for failure to state a claim because state law provided an adequate post-deprivation remedy. Plaintiff’s third strike occurred in *Talley v. Bailey et al. (II)*, (Western District Case No. 2:08-cv-00752-RSM); that was dismissed on July 16, 2008 for failure to state a claim because state law provided an adequate post-deprivation remedy. Plaintiff’s fourth strike occurred in *Talley v. Rogers*, (Western

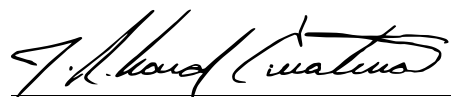
1 District Case No. 2:08-cv-01761-TSZ); that was dismissed on January 13, 2009 as frivolous and  
2 for failure to state a claim.

3 Therefore, plaintiff may not proceed unless he can show that he is “under imminent  
4 danger of serious physical injury.” 28 U.S.C. § 1915(g); *see Andrews v. King*, 398 F.3d 1113,  
5 1120 (9th Cir. 2005) (holding that once the prisoner has been placed on notice by the district  
6 court of potential disqualification for IFP status under § 1915(g), “the prisoner bears the ultimate  
7 burden of persuading the court that § 1915(g) does not preclude *IFP* status”). Plaintiff’s  
8 complaint raises issues of that his due process and Sixth Amendment rights have been violated  
9 and plaintiff does not appear to be in imminent danger of physical injury. *See* Dkt. 1.

10 Accordingly, the Court recommends denial of plaintiff’s application to proceed *in forma*  
11 *pauperis* because he is barred from proceeding without payment of the filing fee and he has not  
12 shown that he is in imminent danger of serious physical injury. If plaintiff intends to pursue his  
13 complaint, he is advised that as a three-strikes litigant, he must pay the \$400 filing fee to proceed  
14 with his action.

15 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
16 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
17 6. Failure to file objections will result in a waiver of those objections for purposes of de novo  
18 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
19 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
20 September 4, 2015, as noted in the caption

21 Dated this 7<sup>th</sup> day of August, 2015.

22 

23 J. Richard Creatura  
24 United States Magistrate Judge